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WEIGHT OF EVIDENCE.

On the authority of *Com.* v. *Child*, 10 Pick. 252, and *Swift* v. *Stevens*, 8 Conn. 431, it is said[1] by Mr. Wharton, in his work on Criminal Law, that a judge has a right to express his opinion to the jury, on the weight of evidence.

Whatever may be the law in Massachusetts and Connecticut, the weight of judicial authority in Pennsylvania is believed to be against the exercise of such right, if indeed, it does not deny its existence. Judge Baldwin, in his charge to the jury, in *United States* v. *Braddee*, says: "You will decide, as to credibility—upon what we dare not touch. We are bound to take evidence as true,—you may do as you please, as to believing or disbelieving the best man in society; the whole case is open to you." True, evidence may be credible, and yet have but very little weight; but it certainly cannot have much weight without credibility. So far, then, as the weight of evidence depends upon its credibility, the language of Judge Baldwin clashes with the highly respectable authorities of Massachusetts and Connecticut. As an instance of practice, however, it is worthy of observation, that the distinguished New York

[1] Wharton's Criminal Law, Ed. 1852, p. 883.

Judge—who presided in the celebrated case of the *People* v. *McCleod*, distinctly and unequivocally told the jury, that one of the witnesses had sworn falsely.[1] But the Supreme Court of Pennsylvania coincide with Judge Baldwin; and they have recognized a more stringent rule than that of the Braddee case. It is proper, however, to observe, that the Supreme Court of New York are sound on intervention in such cases. They administer the following just and dignified rebuke to the judge, who presided at the trial of McCleod: "Whether the facts alleged are true, is the proper and *only* province of the jury." *People* v. *McCleod*, 1 Hill, 436.

Judge Bell, of the Supreme Court of Pennsylvania, says, that the *value of proof* must be determined by the jury. (*Burns* v. *Sutherland*, 7 Barr, 106.) And this was not a mere dictum. The principal point ruled in that case was, that the jury are to determine whether the facts are sufficiently established. And is not Judge Bell's expression, *value of proof*, essentially and in every sense, equivalent to the expression, *weight of evidence?* In another case, however, the Supreme Court of Pennsylvania use the identical expression, and adopt the actual converse of the New England rule, as given by Mr. Wharton. The *weight of evidence*, in regard to particular facts, is not matter for the Court to charge upon. (*Brittain* v. *Doylestown Bank*, 5 Watts & Serg., 87, 100.) It is submitted whether the Pennsylvania authorities are not in accordance with the theory and spirit of the institution of trial by jury. Let the Court exercise exclusive jurisdiction over all questions of law, and let the jury alone dispose of all questions of fact. And such appears to be the better opinion even in Massachusetts, notwithstanding the case of *Com.* v. *Child.*

In a recent case, Chief Justice Shaw says: "It would be like a usurpation of authority and violation of duty, for a Court, in a jury trial, to decide authoritatively on the questions of fact, and for the jury to decide ultimately and authoritatively upon the questions of law." "This, as a general principle, is applicable alike to civil and criminal cases." *Com.* v *Porter*, 10 Met, 286. C. C.

[1] See Pamphlet Trial.